

Potential NCUC Regulation for Sanitary Districts in North Carolina?

04.07.2011

[Christopher J. Ayers](#)

The North Carolina Utilities Commission (“NCUC”) could find itself regulating a host of new water and sewer providers if recently filed House Bill 464 is enacted into law. Filed on March 24, 2011, HB464 is sponsored by Representative Dockham and is entitled: An Act Providing That A Sanitary District Is A Public Utility Subject To Regulation By The North Carolina Utilities Commission.

HB464 applies only to sanitary districts that are created pursuant to North Carolina General Statute Chapter 130A, Article 2, Part 2. Pursuant to N.C. Gen. Stat. Chapter 130A, the Commission for Public Health may create sanitary districts for the purpose of providing water and sewer service within the district. Sanitary districts are governed by a board that is elected by the board or boards of county commissioners of the counties where the district is located. Sanitary districts have the authority to, among other things, levy taxes within the district, compel connection to the water and sewer system, establish fire departments, establish zoning units, make special assessments against benefited property, and condemn private property. Sanitary boards are responsible for setting service charges and rates pursuant to N.C. Gen. Stat. § 130A 64.

In the event HB464 becomes law, sanitary districts would become subject to NCUC regulation. The biggest impact arising from NCUC regulation would be that sanitary

boards would no longer be able to independently establish rates for water and sewer service. Instead, sanitary districts would be required to seek authority from the NCUC to increase utility rates, which would be based on a calculation derived from the district's net investment in the facilities, operating expenses and a reasonable rate of return. The NCUC generally requires customer hearings prior to adjusting a utility's rates in order to identify (and compel correction of) service issues or deficiencies. NCUC regulation also would include standards with respect to billing, service disconnection, record keeping, disposal of utility assets and expansion of the district's service area. Currently, sanitary districts exercise control over these aspects of their operation.

The potential for extending NCUC jurisdiction to include sanitary districts presents a number of issues. Sanitary districts will experience increased administrative and regulatory burdens. While the customer will receive the benefit of NCUC supervision over sanitary district water and sewer rates, the customer will be saddled with the costs incurred to comply with Chapter 62 and NCUC rules. Sanitary districts will also have to face the challenge of converting their current operations to a regulated framework and may be subject to the public utility regulatory fee established in N.C. Gen. Stat. § 62-302(b).

The NCUC also will face challenges as it seeks the most efficient way to regulate a quasi-public body. Historically, the utility rates and service of public bodies have been unregulated under the theory that a customer's recourse was through elected officials and the ballot box. If HB464 becomes law, the NCUC will have to determine the most effective way to regulate a quasi-public body that has taxing authority and other privileges afforded to public entities—not to mention a history of establishing its own

rates and service protocols. It is likely that substantial changes to Chapter 62 will be required to address these issues and reconcile the inherent differences between privately-owned and publically-owned utilities.

It is important to note that HB464 only serves to bring Chapter 130A sanitary districts under NCUC jurisdiction. The bill does not seek to extend NCUC jurisdiction to water and sewer authorities established pursuant to Chapter 162A, such as Orange Water and Sewer Authority, Cape Fear Utility Authority and Yadkin Valley Sewer Authority. It also does not seek to extend NCUC regulation to county and city utility systems. Those entities can breathe easy for now.

HB464 passed its first reading on March 28, 2011 and was referred to the Public Utilities Committee. The bill must be passed by both the North Carolina House and Senate and signed by the governor prior to becoming law. This same bill was filed in the House during the 2009-2010 Session, but was never passed by the House.

